

APPEAL NO. 042228
FILED OCTOBER 28, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on August 17, 2004. The hearing officer resolved the disputed issues by deciding that: (1) the respondent's (carrier) defense on compensability is not limited to the defenses listed on the first Payment of Compensation or Notice of Refused/Disputed Claim (TWCC-21) that was filed with the Texas Workers' Compensation Commission (Commission) on January 5, 2004; (2) that the appellant's (claimant) date of injury is _____; (3) that on _____, the claimant sustained a compensable injury in the form of an occupational disease that extends to include bilateral carpal tunnel syndrome and tenosynovitis; (4) that the carrier is not relieved from liability under Section 409.002 because the claimant timely notified her employer in accordance with Section 409.001; (5) that the claimant is not barred from pursuing her worker's compensation benefits because of an election to receive benefits under group insurance; and (6) that due to her _____, injury, the claimant has had disability from _____, through April 2, 2004, and at no other time as of the date of the CCH. The claimant appealed, disputing the determinations that she did not have disability after April 2, 2004, and that the carrier's defense on compensability is not limited to the defenses listed on the TWCC-21 filed on January 5, 2004. The carrier responded, urging affirmance of the disputed determinations. The determinations of date of injury, compensable injury, timely reporting, extent of injury, and election of remedies have not been appealed and have become final pursuant to Section 410.169.

DECISION

Affirmed.

We note that carrier waiver was not an issue to be decided at the CCH. It appears to be undisputed that the carrier received notice of the claim on December 24, 2003, and timely initiated benefits. A TWCC-21 dated February 11, 2004, was in evidence, which stated the amount of temporary income benefits being paid was increased based on receipt of an Employer's Wage Statement (TWCC-3). Additionally, a TWCC-21 dated February 16, 2004, was in evidence, which listed several grounds for disputing the claimant's claim. The hearing officer found that the carrier's defense on compensability is not limited to the defenses listed on the first TWCC-21 filed with the Commission on January 5, 2004. Section 409.021(c) provides in part that the initiation of payments by an insurance carrier does not affect the right of the insurance carrier to continue to investigate or deny the compensability of an injury during the 60-day period. Although the TWCC-21 dated January 5, 2004, was not in evidence, there is nothing in the record to indicate that it listed defenses in dispute of the claim. Rather, the TWCC-21 dated February 11, 2004, indicates that benefits were initiated prior to that date and as previously noted, it was not disputed that the carrier timely initiated benefits. There

is no evidence in the record to indicate that the January 5, 2004, TWCC-21 was anything more than an initial acceptance of the claim. We perceive no legal error.

Disability is defined as “the inability because of a compensable injury to obtain and retain employment at wages equivalent to the preinjury wage.” Section 401.011(16). The hearing officer found that the claimant had disability from _____, through April 2, 2004. The claimant testified that she returned to work light duty until she left work to travel to California to see her father. She further acknowledged that she would have continued working except for her trip. She testified that upon returning from her trip she was fired for excessive absences. The claimant contended that her trip was approved and she should not have been terminated.

The question of disability presented a question of fact for the hearing officer to resolve. The hearing officer, as the finder of fact is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the fact finder, the hearing officer was charged with the responsibility of resolving the conflicts and inconsistencies in the evidence and deciding what facts the evidence had established. This is equally true of medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). The hearing officer was acting within his province as the fact finder in resolving the conflicts and inconsistencies in the evidence and finding a limited period of disability. Nothing in our review of the record reveals that the challenged determinations are so against the great weight of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986). Accordingly, no sound basis exists for us to disturb those determinations on appeal.

We affirm the decision and order of the hearing officer.

The true corporate name of the insurance carrier is **FEDERAL INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**PARKER W. RUSH
1445 ROSS AVENUE, SUITE 4200
DALLAS, TEXAS 75202.**

Margaret L. Turner
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Robert W. Potts
Appeals Judge